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THE writer has been asked many times to give his recollections of the occurrences with which he was familiar during the early years of Professor Langdell's services to the Harvard Law School. He has hesitated to do this. But so urgent have been the requests, based in great measure upon the fact that those who were in the School during that eventful time are rapidly passing away, that he has reluctantly yielded. He is conscious that what he has written does not adequately portray the situation and events. He realizes that it is more or less fragmentary. But he has endeavored to give some accurate description of those days. It has seemed best to omit the names of teachers and students, even of those who were prominent. The single exception in the case of Professor Ames is necessary, in order that a salient characteristic of Professor Langdell's work may best be illustrated. If any feel that what is said is too eulogistic of Professor Langdell, the writer is sure that the survivors of those who were connected with the School in 1870–72 will not share that feeling. He is confident that there will be no difference of opinion concerning President Eliot's responsibility.

It is a striking fact that the Harvard Law School for almost fifty years, nearly one half of the period of its existence, has followed uninterruptedly the method of instruction originated by Professor Langdell in 1870, a method radically different from any

previously in use, and that this method has been pursued for many years by most American law schools.

Before that time the School had a wide and favorable reputation at home and abroad, and a history of which its graduates and friends were proud. It had had the services of eminent lecturers and professors who, in addition to instructing the students, had written legal treatises which were recognized as authorities. Among its graduates were men who had achieved the highest distinction on the bench and at the bar. Yet for some time before 1870 there was a growing dissatisfaction with the condition of the School and a feeling that the way in which it was being conducted was susceptible of improvement. Some requirements, while of apparent value, were not enforced. The laxity of study among many of the students and the ease with which the degree of LL.B. was obtained alike by the deserving and the undeserving were disquieting. Before the fall of 1870 the degree was given on the recommendation of the faculty to students who had studied three terms in the School, or who had studied two terms in the School and had been admitted to the bar after one year's study of law before coming to the School. Sufficient pains were not taken to ascertain whether they had in fact studied. The statement of the applicant, that he had studied and attended lectures, practically sufficed to gain the degree, a statement which, as can readily be understood, was freely given and accepted. While the greater part of the students were studious and a considerable portion were graduates of colleges, there were many of slight previous training who were attracted by the Harvard degree. Some entered a higher educational institution for the first time. Entrance to the School was free — *i. e.*, without requirement as to previous study — to all and at all times of the school year. It occurred occasionally that some of those who had attended a term, having learned of undergraduate happenings, felt it their privilege, if not their duty, to haze a newcomer. It is difficult for the graduates and members of the last forty-five years to realize this. In the lecture room the courses were not stimulating to many. Although the greater number worked faithfully and profited by their work, yet many preferred a course of ease. There was no examination for the degree.

In 1869–70 the faculty consisted of the president of the university and three professors of law, who were the teaching force.

There were three classes,—senior, middle, and junior. The method of instruction had been for years by lectures.

The authorities of the University examined carefully into the condition of the School, and a thorough reorganization resulted. The office of dean was created. Examinations for the degree were prescribed. In the spring of 1870 Mr. Langdell was appointed professor and made dean. These changes were fundamental in their effects on the future of the School. It has become a tradition that President Eliot was led to appoint Langdell professor by his remembrance of hearing, while a junior in college, Langdell in his room in Divinity Hall talk law in a way which indicated genius. Undoubtedly this caused him to think of Langdell. But it should be said that before the appointment was made much time was spent and great pains were taken to obtain the fullest information about Langdell's work after he left the School and practiced law. Eminent professors, judges, and lawyers were conferred with. While opinions differed, as a result of the inquiry the School fortunately acquired the services of this rare man.

In the fall of 1870 the Law School was located on Harvard Square in Dane Hall, which was in the southwesterly corner of the yard of Harvard College to the west of Wadsworth House. The building was of brick and contained a lecture room in the second story, a library room in the first, and private rooms used by the regular professors. The entrance was up a few steps to a porch and thence to the main hallway. Then, as before, no entrance examination or particular course of previous study was required for admission. The only requirements were, first, age nineteen years or over, and secondly, good moral character. Students could enter at any time of the year. As before, the School was open to all at all times of the year. The liberality as to entrance was, of course, attractive. Of the students who were enrolled in the fall of 1870 more than one half held no degree from any institution of learning. Yet there were many well-educated men. The School offered a complete course of legal education, except in matters of mere local law and practice, for those intending to practice at the bar of any state of the United States. There were seven required and eleven elective studies. Instruction was given, first, in recitations; secondly, by lectures and expositions; thirdly, by moot courts; fourthly, by cases assigned to students for written and oral opinions; fifthly,

by drawing pleadings at common law and in equity. The first was new to the School. It originated with Professor Langdell, and meant an entire change in the method of instruction. The faculty, as before, consisted of the president of the university and three professors. The dean was the head of this department. This was an important and valuable innovation. The professors and four lecturers constituted the teaching force. There were no distinct classes. The courses and lectures were open to all. Access to the shelves of the library was free and unobstructed. As some of the professors and lecturers used published treatises in books as the bases of their lectures, students were allowed to take such text-books from the building for the purpose of study. There was a large number of copies of these books in the library for such use.

The experience of one who entered the School in 1870 is interesting in this connection. He was an entire stranger to the University and to the students of the School. As he passed up the steps to enter the building there were three or four young men, evidently students, standing on the porch, who looked at him critically. He inquired the way to the office of the dean, where one presented himself for admission to the School. This work was among the manifold duties of the dean at this time. There was no secretary. One of the young men addressed him as "Freshie" and gave complicated and bewildering directions which his companions approved; and suggestions of future hospitality on his part toward them were made to him. He went into the building and was then directed by some one to the office. Professor Landgell asked many questions in addition to the routine inquiries. Some of them are interesting in view of the requirements for entrance made years after. They related to previous training and education; and it was evident he thought that a person who had not received a sound preparatory training might find the courses very difficult. For such he suggested hard outside work to supply, in a measure, the deficiency. When this reception was mentioned afterwards to students and graduates, most of them expressed much surprise, inasmuch as the prospectus stated that no previous study was required; and further, they said that since it was highly desirable that the numbers and the income should be increased it was a serious mistake to discourage men from entering. They reasoned that if one attended the lectures he should acquire enough legal knowledge to fit him for the legal

profession, that too much learning was in the way, that work in the School was more important than prior training, that the prospects of the School would be injured. A few, however, agreed with Langdell. This was the first indication of his attitude in this respect of which the writer has heard. Whether this is the true policy is, although seemingly, not yet really settled. It is questioned by many — not a large number, it must be admitted. On the one hand, it is urged that the School would be swamped by the vast number who, judging from past experience, would come with the mistaken belief that they could continue the course of studies successfully and who would overwhelm the School with their numbers and throw confusion into it; that the accommodations in space are insufficient, and that they would seriously and disastrously interfere with, and most likely destroy, the carrying on of its work. On the other hand, it was and still is urged that an educational institution cannot properly deny the right of those who, although they do not have a preliminary training, have been, as has been shown in former years, and are, able to pursue the course equally successfully with those who have had prior educational advantages. It would have been a misfortune if Simon Newcomb had been denied admission to the scientific school because he held no college degree. However this may be, Langdell favored the requirement of a degree for admission to the Law School.

Again, in the fall of 1870 a new and drastic change was made with reference to the degree in law. Announcement was made that while students not candidates for the degree could avail themselves of the advantages of the School in whatever measure and to whatever extent they might see fit, it would no longer be given as the result of practically mere attendance. The applicant for the degree was required to pass satisfactorily thorough and searching examinations in all the required subjects and in at least seven of the elective courses, after having been in the School at least one year. Graduates and warm friends of the School were greatly alarmed by this requirement. They said that there was no need of it; that success in passing examinations would not bring success in actual practice of the law, and that, after all, to prepare for the actual work of the law was the reason that young men attended; that it was unnecessary to take such steps to ascertain whether there had been serious study in each case; that the statement of the

student always had been and should be sufficient, and that such a step would inevitably injure the School by decreasing the attendance and consequently the income. It is hardly necessary to say that most of the students were opposed to this radical change. A small number favored it.

As we have before stated, the method of instruction had been for years by lectures. In the year 1870–71 this was generally the case. Some of the professors and lecturers literally lectured, that is, read from textbooks or prepared notes, pausing occasionally to make some explanation, and infrequently to answer questions asked by courageous students. A few of the lecturers gave out in advance the subject of the particular lecture, and talked not only to, but once in a great while with, the learners.

This fall (1870) Langdell practically began his long service in the School. There was great curiosity as to what he would do. It was generally believed that his was to be a new method. But no one had any conception what it would be until the students were given, in advance of the lecture, sheets which contained reprints of cases, the headnotes omitted, selected from various reports. As he followed Lord Coke's *melius petere fontes quam sectari rivulos* the first selections were taken from old reports. The sheets for the civil procedure course contained early forms of pleading, in Latin. The latter excited many forcible comments. Some asked why they were not given extracts from ancient tablets. On the appearance of the cases and forms the proposed system was condemned in advance by practically all.

There was but one lecture room. The lecturer occupied a slightly raised small platform at one side of the room, a desk in his front. The students' seats, comfortable, cushioned settees, were arranged in a semicircular manner, rising from front to rear. There were no conveniences for taking notes save a few small square tables which flanked the lecturer's desk on either side. The janitor enjoyed the privilege of letting these tables. Although thus condemned in advance, Landgell's first lecture excited keen interest. The subject was Contracts. While it was a beginner's course, most of those who had been over the subject during the preceding year felt drawn to the lecture. The attendance was unusually large. It filled the room. Langdell began. A short and vivid account has been given by Mr. Batchelder of the way in which Langdell began, — by

questioning students about the case of *Payne* v. *Cave*.[1] After the preliminary inquiries as to the facts, arguments, and opinions had been made, further questions were put to draw out the views of the students as to the arguments and opinions. At first it was almost impossible to get much expression; for it was evident that very few had studied the case critically, and had had no thought of forming any judgment of their own. And so as question after question was put, all presupposing a careful examination into the various aspects of the case, the answerers for the most part said that they were not prepared. The new men generally had not studied law at all. It seemed to them the height of presumption to have, and much more to express, an opinion. It was to learn rules of law that they had come to the School. When they had accomplished this they might have some right to state their views. They thought it absurd to undertake to give their thoughts about a subject of which they knew nothing. Those were courageous indeed who ventured to participate. Langdell asked more and more questions. As it now comes to the memory of one who was present, there was a series of admirable, analytical inquiries. At the time, the general judgment of the students was that it was a childish performance; for nearly all, if not all, failed to see at the beginning that the method was to analyze the case closely and to extract the essential elements, and in this way to grasp the real legal principles involved. But the hour passed with amazing rapidity. When it ended there was a great deal of comment by those who had been present. Interest had plainly been excited, but principally in the method of teaching. By far the greater number openly condemned the new way. They said there was no instruction or imparting of rules, that really nothing had been learned. Older students said they theretofore had received something, even though in a preliminary way, from professors and lecturers, but here was an entire absence of anything but a seeking of expressions of opinion from youths who were ignorant of what they talked about; that no rule or suggestion of any rule of law had been hinted at; that certainly it was no way to learn law, for the law was not in the idle talk of these young boys; that the performance was foolish; that Langdell acted as if he did not know any law; that it would be more profitable to attend other lectures where something could be learned. Yet

[1] 3 T. R. 148 (1789).

there were a few who felt a quickening of their zeal, who were certain that they had received an impulse, who insisted that they got "something which somehow lasted," as one of them, since famous at the bar, expressed it.

In most of the other lectures the course of instruction followed the ways of former years. The instructor used a textbook, reading from it and making such comments as he deemed advisable, and suggesting that cases which he cited from law reports be examined. Occasionally a student would ask a question and the instructor would reply. But the textbook furnished the real subject of the hour. General discussion was very rare. The writer never heard any. It was assumed that the author of the textbook had examined the subject and had found out the true rules of law relative thereto. Thus the rules were given. There was little, if any, examination made, outside the textbooks from which the instructor read, by the students with the purpose of ascertaining how the rules originated or why they existed. It was assumed that these rules were right. Thus it was a process of absorption. One stout advocate of this system said, "Professor —— and his book fairly exude law. We take it in and assimilate it." The result of the method of Langdell was active search and inquiry; that of the other professors was passive absorption. One produced work and constant discussion outside the lecture room among the students; the other, acquiescence in what was read by the lecturer. One excited earnest inquiry; the other produced a feeling of satisfaction in hearing the rule announced. On the one hand, accuracy of thought and expression were encouraged, tending to clear perception of sound distinctions and to the discovery by the student of the principles involved. On the other hand, acceptance of the conclusions of some one who announced the law was the expected and acceptable result. The second was by far the more popular method among members of the School; and it practically had the general approval of professors, graduates, and those engaged in the practice of law. Langdell's methods were novelties and were distrusted. There was much curiosity as to how they would turn out. Attendance fell off. Students wearied of the "useless" preparation for the "grammar school recitation," as it was called, and the number of those "prepared" dwindled away to very few. The consideration of quite short cases in the advance sheets occupied several lectures. It

seemed a waste of time. No advance appeared to be made. It was said that a half hour's perusal of a textbook would yield more information than could be obtained by several weeks' talk, mostly by the students themselves, in the lecture room. Comparisons were made between the two methods, much to the disadvantage of the new way. It was predicted that Langdell's course on Contracts could not be finished in two years, that one half could not possibly be gone over in a year; whereas the courses of the other professors and lecturers could plainly be gone over with ease within the allotted time.

Again it was asked why Langdell did not give his own opinion, as the others did. It is true that he failed to express himself, although in the early stages of his teaching many questions were put to him in order to draw out an expression of his views. On these occasions he became absorbed in thought and seemed to falter. Usually he asked questions in reply. This occasioned harshest criticism. It was said that he did not answer because he did not know, that Professors —— and —— *knew*, and therefore they replied. On one occasion one of the students who was a steadfast admirer and follower of the new way succeeded in eliciting an immediate answer to a question. After receiving the answer he put several more questions with a skill which it is doubtful whether he has surpassed in his subsequent distinguished career. Langdell was routed. There was violent applause from the greater part of the class. Dust arose in considerable quantities from the settee cushions, which were vigorously used in the demonstration. This occurred at the last of the hour. At the end there was much excitement and expressions of sentiment among the students who had applauded, who said that Langdell had been caught like a small boy — that no law could be learned in such a course and from such a man, who plainly did not know the law. It made little if any difference to them that at the next lecture Langdell took up the question again and discussed and treated it most profoundly. Not many appreciated the treat given them; and very few saw that it was a sincere pleasure to him that the students should study the subject so carefully as to be able to put such pregnant questions. The writer has known professors to make statements involving inconsistencies with what they had said a short time before; but these lapses were usually ignored by the few who no-

ticed them. The judgment of Langdell's critics was adverse and seemingly final.

Even thus early in his career it had dawned on some that Langdell was not undertaking at all to state what the rules of law were, that his real purpose was to incite the young men before him to find them by their own researches and that he felt his own opinions to be of no consequence when compared with the importance of leading them to think and form their own judgments. As before stated, it must be said that to the great majority the road to legal learning led through textbooks and bald statements of what the law was; memory against youthful logic. If it happened that decisions quoted or referred to in the textbook or lecture were in conflict, the doctrine of the textbook used by the professors was accepted. On rare occasions some Langdell follower ventured to ask question of other lecturers during their hours; but the results were different from those derived from Langdell. There was no discussion. The outcome sometimes was unsatisfactory.

A single instance by way of illustration will be sufficient. The course was on Evidence. The textbooks were two, Greenleaf and Best. The immediate subject was Burden of Proof. The lecturer stated that while the rules given in the textbooks were good, on the whole perhaps the clearest rule was that the burden was on the party who, if the case should stop at any point in the proceedings, would as a matter of law lose. One of the men asked him how it would be known who would lose. The reply was in substance that the judge would rule. The student asked how the judge would know. This caused a good deal of amusement; for this student seemed bold indeed to question in this way the wisdom of a judge. He was told that the state of the evidence would enable the judge to rule. He was quiet during the remainder of the lecture; but during the recess he approached the lecturer. A number of students were attracted and followed. He asked again, and receiving practically the same reply, said that the rule seemed to be that the burden of proof was on the party who had the burden of proof. Would the judge come to his conclusion in any way other than being convinced that the burden was or was not sustained? The lecturer said that it was necessary to distinguish between the *onus* and the *pondus*. As the next lecture was about to begin, the matter was ended so far as this course was concerned;

but not with some of the students, who got together and talked the question over earnestly, the general opinion being that of course the judge would know. That was what he was for. In those days there was a profound respect for the learning of the judges. The discussion among the students went on for some time. In later years valuable and important lectures were given in the School on the Burden of Proof and closely connected subjects, such as Presumptions of Law and Presumptions of Fact.

The contrast between the two methods became sharper. As time passed, fewer and fewer remained in Langdell's lectures. The number dwindled to seven or eight. But these were enthusiastic and persistent. They had no doubt as to the benefits derived. They argued the questions raised early and late, before and after the lectures. Some of the other students pronounced it a noisy nuisance. The library was sought by them to an unprecedented extent. They were never satisfied. It was said they criticized the opinions in actual court decisions in "a most disrespectful way." It was asked: Was law to be studied as a science, instead of what it actually was, a practical, every-day art? Were laboratory methods to be followed? What would be the end? Where could any one find out any rule of law if he pursued this iconoclastic way? Everything was made questionable and uncertain. What better course than to accept and remember a rule stated in the textbooks and said to be laid down by some court of last resort and approved by learned professors? The "new discovery" was visionary and unworkable.

But Langdell's followers were persistent in their course. The talks between these few and the many others, during the intervals between the lectures, were frequent and earnest. When asked why he so decidedly preferred the new way, one of these disciples replied that he felt freer, stronger, and better; that he got something which he found nowhere else; that there was no need to waste time in attending the reading of textbooks; that he had long before learned to read, and it was not necessary for him to go to a law school to have some one read to him; that he received more and had a keener interest in the Langdell way.

It will readily be understood that the diminution in the attendance upon Langdell's courses caused alarm. The other teachers had large numbers; he, extremely few. The contrast was painful.

This falling off was considered a demonstration of the failure of his methods; indeed, such was the well-nigh universal opinion among lawyers, professors, and students. But just after the middle of the year a strange thing happened. The attendance at his lectures began to increase, — slightly at first, to be sure, but it was a gain which grew larger slowly but surely. Those who returned became more and more interested as they continued their renewed attendance. Toward the end of the year quite a number, yet considerably less than half of those in the School, were present, and participated in the exercises now sometimes called "investigations." It should be added that these, having caught the spirit of the course, remained constant, and became strong advocates of the system. It was interesting to observe that they inquired about what had been done in their absence and sought the privilege of reading and in many instances copying the notes of those who had attended all of Langdell's lectures. It was noticeable that after reading the notes they endeavored to learn more fully of the matters briefly suggested in the short notes. One can easily understand what must have been the feelings of Langdell when the number fell to seven or eight, and also when the reaction came. Only a strong man of conscientious convictions could follow the chosen path under the discouraging conditions. And when the turn in his favor came, slight though it was, he unquestionably was greatly encouraged. He never exhibited any signs of discouragement or elation, but steadily pursued the course he had chosen. His lectures continued to be increasingly interesting.

It may be well to notice one of the outcomes of his method. For years there had been a "Parliament," which met once a week at night in the lecture room, where the students formed themselves into a representative body, choosing a speaker and practicing the ways of legislative bodies, giving attention especially to questions of parliamentary law. There had also been club courts, among them the Marshall Club, whose members, taking turns as counsel and judges, argued and rendered decisions upon law questions. These organizations were encouraged by the faculty. There had also been a moot court, as it was called, presided over by a professor or lecturer, who gave out the question to be discussed. Members of the school, usually two upon each side, argued before the presiding officer, who at the end of the arguments rendered a de-

cision. Sometimes a considerable number of students attended, but there was not a deep interest. It was found ofttimes that the results were not altogether satisfactory. It was said that the students participating were apt to be discursive, and too often inclined to rely upon oratory and striking phrases. In the year 1870–71 a new club, the "Pow Wow," was formed. It was composed of nine. One presided, acting as chief justice. Two argued the law questions, one on each side. The remaining six were puisne judges. After the arguments the counsel retired, the court advised, then, counsel being called back, rendered a decision, the judges delivering their oral opinions *seriatim*, the chief justice closing. The club met weekly at the rooms of the members, who took turns in the different capacities. Although this club still exists, it is not generally known that one of its original purposes was to practice parliamentary law; but this was never done, and the meetings were devoted exclusively to the consideration of law questions. Before the expiration of the year it became the custom to plead the case in writing, so as to develop the point or points of law thus evolved. This gave excellent practice in common-law pleading and was a most profitable procedure, even though it may have been somewhat technical occasionally. Once there was triumph when an *absque hoc* was achieved. The great advantage lay in a painstaking analysis of the facts in order, by eliminating immaterial matters, to develop in a clear-cut way the questions of law to be argued. The members of this club were attendants on Langdell's lectures. The deepest interest was taken. Able arguments were made, some of them equal to the best made in highest courts; and apparently as much was felt to be at stake as if the case were real. This practice, coupled with the mental discipline gained in Langdell's lectures, brought out the best there was in the men. A slovenly pleading or a careless argument — rare indeed — occasioned a sharp rebuke from the court through the chief justice. This developed a thoughtful and studious set of men, and formed in them habits of industry which followed them in their later years of active work in practice at the bar and on the bench.

Too much emphasis cannot be placed upon this early result of the Langdell method. His mind recoiled from temporizing or avoiding the real issue. He sought only the true solution, and when he had arrived at a conclusion, whether with reference to his method

of teaching or dealing with a law question, he adhered to it tenaciously, even in the face of apparent pecuniary loss to the School or severe condemnation for himself. The former he must meet when it came; the latter he bore patiently and without complaint. Any error on his part he was always quick to acknowledge; for in his single-minded devotion to the requirements of the task which he had undertaken he endeavored to ascertain and follow the course along which deep and incessant research and thought should lead his honest mind. His earnest endeavor was to lead his pupils to be as unerring as possible in their search for the truth. It has been said frequently, and on high authority, that he declared the law to be a science, and that it should be studied as such. Certainly his effort was to lead the pupil to analyze the cases and authorities and ascertain the principles involved so far as possible in the way science is studied. From remarks dropped by him occasionally outside the lecture room it is evident he felt from the nature of the subject that it could be resolved into comparatively few absolute rules.

The first year went along. His subjects were not completely covered. At the close the written examinations were held. Langdell's papers did not call for statements of the rules of law, but were designed to ascertain whether the students understood the principles sufficiently to apply them to supposed cases. Although they contained only matters which had been considered in his courses, they were pronounced "stiff" and even unfair. Many of those who had not attended his lectures failed to pass and were deeply disappointed, some openly indignant. They had passed the other examinations. It was discovered that a few who had not attended some of the other courses but had read the textbooks used, had passed the examinations in those courses, receiving excellent marks. Notwithstanding the success of these few, the former predictions of future disaster for the School were renewed with an increased force. The year ended with a general belief that the new way was impracticable and impossible.

Before the beginning of 1871–72 the announcement was made that the degree LL.B. would be given at the end of the school year to those who, having been in the School during the whole course of two years, should have passed satisfactory examinations at the end of the year in the prescribed studies of that year, and also

to those who, admitted one year in advance, should have been in the School one year and have passed satisfactory examinations in the prescribed studies of the second year, at the end of the year. Admission to advanced standing was allowed only on examinations in the prescribed legal subjects.

During the vacation interval between the end of the year 1870–71 and the beginning of the next, there was much discussion as to whether a method better than that followed by Langdell, and also better than that of the other professors and lecturers, could not be adopted. It was conceded at length that there was some good in Langdell's way, although at the same time it was asserted that there was greater good in the other ways. Combination of the two methods was urged: some reading or statement of summary from the textbooks, cases in law reports given to be examined by the students before the lecture, and some questioning and slight discussion. This had been tried in a way during a small portion of the past year. It was indorsed strongly by judges, practicing lawyers, writers on law, students who had not attended Langdell, and indeed by some who had. It was hoped that Langdell might see its advantages and make use of this better way. At the opening of the School year 1871–72 some adopted this intermediate or, as it was sometimes called, combination method, and some adhered to the old. There was much interest in what Langdell would do. Those who had thought that he would modify his method were disappointed. He made no change. This was attributed pretty generally to obstinacy; for it was felt, notwithstanding the enthusiasm of his followers, that the past year had demonstrated the folly of his way. He persisted, and indeed at no time made any modification whatever of his method of teaching, until in later years he was compelled to do so by reason of failing eyesight.

In 1870–71 the students without college or equivalent degree were in a slight majority. In 1871–72 they were in a minority.[2]

In 1871–72, as in the previous year, there were no regular classes, *i. e.*, no division into first and second year men as such. The attendance was large in the lectures of two of the professors and the five lecturers. In Langdell's the number was much smaller than in

[2] 1870–71, students holding degrees 76, without degrees 78
1871–72, " " " 78, " " 56
1872–73, " " " 64, " " 49

the others, although larger than during the year before. There was very little discussion in the courses save in his. New law clubs were formed on the same plan as the Pow Wow, omitting the parliamentary practice. Arguments were again had by the students before and after the lectures. Often the days were too short for these arguments and for the study necessary in preparation for the lecture to follow. Every proposition was subjected to severe scrutiny by the men. Langdell's lectures proceeded in the same way as before, but with increased interest, questioning, and discussions; the students were encouraged to form their own conclusions, being always advised to study court opinions given in the reports. The questions were squarely met. The men felt that all considerations pertinent to the subjects had been before them, and they learned to know that that was all to which they were entitled. It had been predicted that teaching in this way would lead to loose and irrelevant thinking. But Langdell had the rare gift of making remarks in a way which would indicate the real question, without however discouraging pertinent inquiry. And this was done quickly although quietly. So there was no appreciable loss of time. Instead of being indifferent the men were keenly attentive. They were impatient for the lecture hour to arrive. As has been said before, the results, as far as numbers in attendance was concerned, were greatly in favor of the other professors and lecturers. They were able men, highly distinguished in the law — including an ex-judge of the Supreme Court of the United States and leaders in the legal profession — and held in great respect by every one in the School. It should be borne in mind that the bench and the bar had always been looked to when a law teacher was required. But it was beginning to be predicted by a few that the time was coming when it would be realized that a most distinguished career on the bench or at the bar would not necessarily produce a successful teacher of law. Still, there were the ever present inquiries: Who is the most successful teacher? What is the best method? Very few indicated their preference for Langdell and his way. While he was well known by some eminent lawyers and profound students, yet he did not have the favorable reputation of the others. A justice of our highest court predicted that Langdell would ruin the School.

The weeks passed away. The year drew to its close. Then the

examinations came again, with a repetition of the experiences of the previous year. As in 1870–71, the results of the examinations decided the conferring or refusal of the degree.

An unprecedented occurrence happened before the beginning of the year 1872–73. While nearly all those who had completed the courses had severed their connection with the School, five of the students who had won the degree desired to remain a third year. Should they be permitted to do so? What should be their status? There was no third year's course. These five had attended Langdell's lectures. It had been decided to divide the School into two classes, — first-year students and second-year students. Without stating here the reasons which led the authorities to take this action, it is enough to say that they concluded to allow these five men to continue their studies in the School, and they were classified as Resident Bachelors of Law. This was a source of much satisfaction to the faculty, especially to Langdell; for even at this early time he earnestly desired a three years' course as a condition of the degree. His desires were not realized for some years. So this handful remained the third year, and pursued advanced courses.

Some of the club courts were remodeled. In the Pow Wow there were formed the Superior Court (first-year men), the Supreme Court (second-year men), with recourse as a last resort to the Appellate Court, the Pow Wow Chamber. These highest courts were favored with the presence and participation of eminent judges and lawyers, who gave their hearty approval to the proceeding. The writer cannot refrain from mentioning one, Mr. Justice Holmes, now of the Supreme Court of the United States, who was greatly interested, and gave time generously from his busy professional life to the club courts, and who contributed vastly to the advancement of the School, although few were aware of his unselfish devotion.

The teaching force was composed of two professors, one having resigned, and seven lecturers. There was no substantial change in instruction; yet there was some tendency toward more comment in the lectures. The general opinion of bench, bar, and students was still hostile to Langdell's method. The former predictions of disaster were repeated. It is well to examine briefly this condition.

In 1869–70 the number of students enrolled at the beginning of the year, as shown by the university catalogue, was 120; in 1870–71,

154; 1871–72, 134; 1872–73, first year 71, second year 37, resident bachelors of law 5; total 113. Thus, during the three years of his administration the number had steadily decreased until it had reached the lowest point since 1851–52, save in 1861–62 and 1862–63, two of the years of the Civil War. The comments on this decrease were many. Those who approved his method, while not disheartened, were greatly disappointed. The predictions of the critics were being realized. No excuses were or could be offered. The only reply was in fact no reply at all. It was at best an expression of belief that the future would bring better conditions. Furthermore, the money receipts had fallen away. How long would this continue? At this steady rate of reduction in numbers, how long would the School exist? To say that the university authorities, the alumni, and the friends of the School were alarmed is a mild expression of the feelings of those who had the interests of the school at heart. It was commonly thought that there should be a change in the administration and in the way of teaching; that teaching by cases should be given up and a more liberal — as it was termed — mode adopted in its stead. Again, it was urged that in the future a combination of the textbook and a few cases with much less discussion should be the basis.

The three years of endeavor to inaugurate a new mode of instruction had apparently ended in failure. The result of the long and patient trial of Langdell's system, instead of giving assurance of a fresh and vigorous life for the School, indicated rather a gradual approach toward its end. All agreed that the future of the School was at stake. This being the state of feeling, it was indeed bold if not reckless to continue longer the Langdell method, as it had come to be called. It took courage to decide to go on in this losing way, but most fortunately that decision was made and carried out. And contrary to the wishes of most of the sincere friends of the School, announcement was made accordingly, prior to the beginning of the year 1873–74.

There was deep interest amounting to anxiety as to the number of students who would enroll in that coming year. When it was found that it had increased from 113 to 138[3] there was a feeling of great relief. The turning-point had been reached. The School was not wrecked. This increase was most encouraging. The signs

[3] This is enrollment, not average attendance.

were favorable. Lawyers practicing in various parts of this country, and even beyond, sought the services of the students who had been developed in the School to aid them in investigating law questions. When from a lawyer in San Francisco a letter came asking urgently for the help of graduates of the School, Langdell was deeply gratified. Such facts, hardly appreciated at first save by extremely few, were to some extent the explanation of the increase. A young man who had faithfully and profitably followed the courses, could find a fairly lucrative position immediately after graduation. In after years this was well recognized. Furthermore, it was seen that graduates who started practice alone were successful in matters where legal research was required. Their opinions seemed sound and valuable. Briefs prepared by them were exhaustive and convincing, and recognized by courts to be of real assistance.

So the School continued to increase as the years went by. Langdell's system was adopted by professors and instructors, one after another, until it became the established method of instruction.

In June, 1873, while yet a student in the School, James Barr Ames was appointed assistant professor of law. This caused the most insistent remonstrance. A young man utterly inexperienced, who although admitted to the bar had never practiced law! It was unprecedented. Strong efforts were made to prevent confirmation. Happily they were unsuccessful. But so serious was the opposition and from such eminent and influential persons that it is most likely if assistant professorships had not been limited to the term of five years, the School would not have had the benefit of Ames's priceless services. To-day it is impossible to realize how there could have been any objection to this great teacher of law. To understand it, we must dismiss from our thoughts all he achieved after the summer of 1873, and also the successful teachings of the other young men who have followed him in this and other law schools. Consider it as a new and unheard-of venture. The legal profession as a rule is conservative, disliking radical changes. It always has recommended as teachers men who have had actual and successful experience in practice; and this because it has been the traditional way of selecting instructors. Educators usually are of the same mind. It must be confessed that the judgment of practically all would be unfavorable. In 1873 the feeling was dismay and grief. And yet the reason for the appointment was simple and plain to a few. Lang-

dell's view was that a successful practitioner would not necessarily be a successful teacher, any more than a successful teacher must prove to be a successful practitioner. In fact, they were two distinct professions. He considered himself a teacher of the principles of law. He distinguished between law and practice. The principles of the former were to be mastered and then applied. Practice he never undertook to teach. Although lectures on practice were given from time to time, he felt that a law school was no place in which to study it and that practice could only be learned by actual experience in practice. The different laws, rules, and customs in the various jurisdictions were so numerous and so contradictory that it would lead to confusion if it were undertaken. Ames had shown genius in his work in the School. Langdell came naturally to urge the appointment; for it was a result which naturally followed from his system of teaching. He felt that there was need of an instructor who by his work as a student had shown that he thoroughly understood and believed in his method of instruction. He had no doubt of Ames's success. That the choice was fortunate Ames's subsequent career demonstrated. This was a marked epoch in the life of the School. The subsequent wonderful success of this department of the university is well known. After condemnation, criticism, partial and at last entire adoption of his system, Langdell was entirely vindicated.

It was said that Langdell was not practical in his teaching. In fact he was unusually so. His frequent inquiries as to how the questions were raised in the different cases under examination brought out sharply practical aspects. While he disapproved instruction in the arts of practice, no one had a surer eye to the end sought. He did not teach equity until 1873–74. His course in this subject brought the best results ever achieved by him, and was as successful as his treatise is enduring. But he touched the practical key when he suggested to the students that they study the order and decree, and pointed out that the latter was the final goal in the suit in equity, and therefore should be examined with the utmost care. He referred to the success of Bell, the eminent English equity lawyer, and his skill in drafting orders and decrees, and recalled Lord Kingsdown's amusing comment that Bell "often deprived the conqueror of the spoil." [4]

[4] One wonders who drew the final decrees in the Northern Securities cases.

Much has been said and written concerning Langdell's system. At the outset and for a long time it was misunderstood, and consequently not appreciated. We have been considering his course during the early years of his professorship. Although his title was professor, he was and is spoken of as lecturer, instructor, teacher. He was not at all a lecturer. He did not read or deliver discourse, prepared or unprepared; neither did he speak or read as with authority. To formulate or announce rules of law to be accepted by the students formed no part of his method. To say that he was an instructor in the usual sense of being one less in rank than a professor, is incorrect. If we use it within the meaning of one giving information by doctrine or precept, it cannot apply to him. He is best described as a leader or director of the thought of the learner, although leadership or directorship was hardly to be detected in his manner. He seemed to influence insensibly the mental working of the students, while he appeared to be, and indeed was, working along with them. He had the rare faculty of exciting them to do for themselves. The impulse was his. But they felt that they themselves were the discoverers, and when once convinced of the soundness of the rule they sturdily maintained it, for it was their own. Consequently his courses were followed by intelligent, industrious, and earnest men with zeal. Joseph H. Choate said at one time, as is well known, that it made them obstinate and unduly conceited. But he knew and appreciated Langdell, and was interested in favor of his appointment in 1870. He more than once sought Harvard law graduates for his office; for he understood the distinction between persistence in well-studied and matured opinion, and obstinacy in adhering to an opinion simply because it had once been expressed. In time the students themselves came to appreciate the influence Langdell had exerted upon them. One quality was preëminent: he was inexorable in his search for the truth. Every phase of a question was examined. Of course among the men opinions were formed, suggestions made. But his way of testing the opinions expressed by the students was admirable. Reasons were given. Errors if existing were detected and disclosed. If, as rarely happened, he ventured a statement of his own, he welcomed and encouraged inquiry and tests by the men with a pleasure which they knew was sincere. "That man never deceives himself. He cannot. His mind is absolutely honest," was a comment made

during the year 1870–71. His students came to have a rare confidence in him. It was these qualities which in a large way led to his success.

It has been intimated that he was not a great teacher — but not, except at the very first, by those who had the great privilege of sitting under him in the early years of his professorship, when he was at his best. Later, as his eyesight became impaired, he was driven to give up the best of his method, and lectured. The profound depth of these lectures was not fathomed by many of the students, and those who did not grasp the full meaning of what he said felt that he was not a teacher. The few who appreciated the lectures did not agree with this view of Langdell, and the many who have read with admiration and profit his lectures when published in treatises in this country and elsewhere realize the debt which the profession owes him. It is plain this was a departure from his chosen method of instruction, but a departure forced by infirmity of his eyesight. Those who were close to him knew how great was his disappointment, when he was obliged to give up the system he had so faithfully worked out and followed. His solace was, as he intimated to these few, that there were among his colleagues those who had adopted and carried on successfully his way of teaching. The excellence of his work had been demonstrated. It was indeed to him an infinite satisfaction that his method was taken up and followed, not only at Harvard but in law schools and institutions where law is taught at home and abroad. He saw the Law School under his oversight, from a small, poorly arranged School open to all, fit or unfit, diligent or lazy, and granting degrees for residence only, located in a building not much larger than some of the present lecture rooms, grow to a large, well-organized institution crowded with men who had shown by educational tests their right to enjoy its advantages, who labored early and late with enthusiasm, and who were given the degree only after searching examinations, an institution in a new and commodious building, whose graduates were eagerly sought as aids by the legal profession.[5]

[5] The following table of attendance will show the growth of the School in numbers under the Langdell administration and afterwards. From 1817–18 to 1828–29 inclusive, the figures are taken from Charles Warren's History of the Harvard Law School and other sources. From 1829–30 the figures are from the annual reports of the presi-

That the library increased manyfold under his thoughtful supervision is now so well known that there is no occasion to say more concerning this branch of his career.

Mention has been made of the fears that the School would be ruined financially. It was said that he had no practical administrative sense, that he was a mere theorist. During the early years of his service these fears seemed justified. The income fell off. As has been said before, there was an insistent desire that there should be an increase in numbers and income. We need not go over in detail the financial story. It is enough to say that in 1870, when he

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dent and the treasurer and from the School records, and they represent the average number of students attending in the course of the year.

1817–18	6	1852–53	125	1887–88	225
1818–19	8	1853–54	148	1888–89	225
1819–20	11	1854–55	125	1889–90	262
1820–21	13	1855–56	117	1890–91	285
1821–22	13	1856–57	115	1891–92	370
1822–23	10	1857–58	143	1892–93	405
1823–24	8	1858–59	151	1893–94	367
1824–25	12	1859–60	161	1894–95	413
1825–26	13	1860–61	148	1895–96	475
1826–27	8	1861–62	103	1896–97	490
1827–28	8	1862–63	92	1897–98	551
1828–29	6	1863–64	129	1898–99	564
1829–30	24	1864–65	139	1899–00	613
1830–31	31	1865–66	177	1900–01	655
1831–32	40	1866–67	167	1901–02	633
1832–33	38	1867–68	125	1902–03	644
1833–34	51	1868–69	142	1903–04	743
1834–35	32	1869–70	122	1904–05	766
1835–36	52	1870–71	136	1905–06	727
1836–37	50	1871–72	122	1906–07	705
1837–38	63	1872–73	113	1907–08	719
1838–39	78	1873–74	131	1908–09	690
1839–40	87	1874–75	137	1909–10	765
1840–41	99	1875–76	173	1910–11	790
1841–42	115	1876–77	199	1911–12	809
1842–43	107	1877–78	196	1912–13	745
1843–44	127	1878–79	169	1913–14	696
1844–45	129	1879–80	177	1914–15	730
1845–46	145	1880–81	161	1915–16	791
1846–47	126	1881–82	161	1916–17	857
1847–48	126	1882–83	138	1917–18	297
1848–49	100	1883–84	150	1918–19	68 (before the Armistice)
1849–50	90	1884–85	156		434 (after the Armistice)
1850–51	100	1885–86	158		
1851–52	110	1886–87	188	1919–20	880

began, the funds were small in amount, and that in 1895, when he retired, the total was $360,000 invested and a cash surplus of $25,000. Excellence had received its reward. We may perhaps be excused if we make the statement that this man, "not practical," with "no business sense," left a considerable private estate which was the result of his own vigilance and good judgment.

It is almost impossible to refrain from a comparison between Langdell and Ames, his pupil and successor; but this must be deferred to some future time.

It has seemed strange that one not widely known in his profession, and in the face of such powerful opposition, should have been selected as the head of the Law School, and should have worked alone such a transformation in the School. Indeed, it was more than strange; it was impossible. He had no such thought. He did not bring about this change single-handed. He had constant assistance, such as is rarely given to any one engaged in a great and difficult undertaking. The system was his. To put into practice and continue that system unaided was beyond his or any one's power. The School needed a change. The heavy burden of selecting the instrument, as well as affording the necessary support, was mainly carried by another man.

Professor Langdell was not disposed to defend himself or his invention by argument against hostile criticism. He would not even argue on the subject with members of the governing boards or members of the law faculty. He was satisfied to leave the necessary current defenses and persuasions to President Eliot, and to await the verdict of the legal profession on the success of his disciples at the bar. President Eliot supported Professor Langdell's methods and measures with all his might; and the occasions were few on which these two men did not completely agree on any action either of them proposed. They both took confidently the necessary risks, and to them both the enthusiastic work of "the Langdell men" brought early and sufficient encouragement. As the years passed it was a satisfaction to them both to receive requests from other law schools for the temporary services of Harvard professors to exemplify the Langdell mode of instruction, which was being adopted by them, and to admit to the School well-trained students, some of them sons of eminent judges and distinguished personages in England and other foreign countries, who

sought and availed themselves of its advantages. These two men together, with the powerful assistance of Dean Ames, for whose appointment they were primarily responsible, put the School many years in advance of any similar institution, making it not only first among equals, but first with a long interval.

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